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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

## NOS. ~~968-9~~ 64

THE ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. Fraser, President and F. H. Nemitz, Senior Vice-President; and **Brotherhood of Railroad Trainmen**, A. F. Whitney, President and S. R. Harvey, Assistant President,

*Petitioners,*

vs.

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES and J. M. FOX, Respondents. RAILROAD YARDMASTERS OF AMERICA, GREAT NORTHERN RAILWAY COMPANY and SOUTHERN PACIFIC COMPANY,

*Intervenor-Respondents.*

---

F. J. WILLIAMS, WILLIAM BISHOP, PAUL M. CARTER, M. J. LEACH, and FRED LEWIS, Individually and as Members of the National Railroad Adjustment Board,

*Petitioners,*

vs.

O. E. SWAN, T. K. FAHERTY, R. A. KNOFF, L. L. McDONALD, L. O. MURDOCK, H. J. REESER, J. W. COX, E. W. FOWLER, R. A. WALTON, W. O. HOLMES and J. M. FOX, Respondents. RAILROAD YARDMASTERS OF AMERICA, GREAT NORTHERN RAILWAY COMPANY and SOUTHERN PACIFIC COMPANY,

*Intervenor-Respondents.*

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## BRIEF OF INTERVENOR-RESPONDENT, RAILROAD YARDMASTERS OF AMERICA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### The decision below.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit, is reported at 152 F. (2d) 325.

## Questions Presented.

The only question actually in issue is whether the first or the fourth division of the National Railroad Adjustment Board has jurisdiction over disputes involving yardmasters. That question in turn depends entirely upon whether yardmasters are "train and yard service employees" within the meaning of section 3 first (h) of the Railway Labor Act. Hence, the only ultimate issue is the correctness of the district court's conclusions of law 2, 4 and 5 (R. 233-4). All other matters discussed in petitioners' brief are entirely collateral and argumentative.

## Statement of the Case.

Petitioners have not stated the case in either petition or brief in such a way as to present the matter involved, and what is material to the consideration of the questions presented, as required by rules 38 and 27. Pages 2-6 of the petition and pages 15-18 of the brief do not fairly reflect the contents of the original complaint or the controlling facts.

There are in railroad service in this country about 6,200 yardmasters.[1] This intervenor-respondent has approximately 4,000 members, all of whom except about a dozen stationmasters, are yardmasters. The petitioner organizations are composed primarily of railroad employees in train and yard service. The Order of Railway Conductors has approximately 50,000 and the Brotherhood of Railroad Trainmen has approximately 196,000 members.[2] On the basis of their stipulated percentages of total railroad mileage, applied to the total number of yardmasters in service,

[1] Interstate Commerce Commission, wage statistics of Class I Steam Railways in the United States, No. M-300, November 1945.

[2] Florence Peterson, Handbook of Labor Unions (1944) pp. 319, 307.

these totals cannot possibly include more than approximately 375 and 800 yardmasters, respectively (R. 162). The structure of the Railroad Adjustment Board, as prescribed in section 3 of the act, and scrutiny of the record here (especially such parts thereof as pp. 47-51) clearly show that in instituting this proceeding petitioners had two objectives: First, to have their seniority claims in respect of yardmaster vacancies tried before a tribunal whose employee members are selected (as are those of the first division) by train and yard service representatives, i. e., principally by themselves; and second, to create a legal situation in which the weight of their numbers might be used to compel yardmasters to select the petitioner organizations rather than this intervenor-respondent as collective bargaining representatives. In short, this litigation is another attempt of large and powerful organizations to overwhelm smaller ones, eliminate them from competition, and monopolize the collective bargaining field.

This intervenor, not either of the petitioner organizations, is the leading representative of the craft or class of employees known as yardmasters on railroads. When the stipulation of facts was executed July, 1942 this intervenor-respondent was collective bargaining agent for yardmasters on 60% of the country's railroad mileage on which yardmasters are represented by labor organizations having in effect collective bargaining agreements in behalf of yardmasters and 52% of the total railroad mileage in the country, all as against much smaller percentages represented by plaintiffs respectively (R. 162).

Contrary to the inference which might be drawn from page 2 of the petition, the controversy as to which division of the National Railroad Adjustment Board has jurisdiction of disputes involving railroad yardmasters did not originate in August, 1941, or even in March, 1938. From the time of the adjustment board's organization, this inter-

venor-respondent had insisted, to the adjustment board and the national mediation board, that the fourth and not the first division of the adjustment board has jurisdiction of such disputes.[3]

Early in 1938 the petitioner organizations filed with the first division four disputes (docket Nos. 1198, 4503, 4504, 4505)[4] which on their face appeared to involve claims of four of their members as yardmasters. In January, 1938, the first division deadlocked on the question of jurisdiction and reported such deadlock to the interested parties. On March 15, 1938 this intervenor-respondent filed with the fourth division three yardmaster disputes (R. 157). The fourth division also deadlocked on the question of assuming jurisdiction (R. 158).

This intervenor-respondent thereupon brought action in the district court against all members of the fourth division for a writ of mandamus or mandatory injunction to command that division to hear the three yardmaster cases. The object of the petition (R. 171) was to cut through what otherwise might have been an endless spiral of deadlocks and failures to act, with the decisions of the two divisions in possible conflict. The answer of the carrier members of the fourth division (R. 175) was precisely what their previous contention that the fourth division has jurisdiction of yardmaster cases had led everyone to expect. As to the employee members, their contention that the first and not the fourth division has jurisdiction of such cases, which had deadlocked the fourth division, led this intervenor-respondent and everyone else in the proceeding to expect that they would resist the petition. When instead of doing so they failed to answer, the record suggests and there in fact

[3] National Mediation Board, First Annual Report (year ended June 30, 1935), p. 58.

[4] Published Awards, First Division, National Railroad Adjustment Board, Volume 15, pp. 341-360.

existed no cogent reason why default for want of answer and decree in accordance with the petition should not have been taken against them (R. 176). If by the recital which the petitioners take the trouble to italicize on page 3 of their petition, they intend to suggest that the decree was "collusive" in any sense other than that it was consented to by the answer of some of the defendants and based on the default of others, the suggestion is both unjustified and unjustifiable.

The assertion (petition 3), that the first division *continued* to assert jurisdiction over yardmaster disputes until August, 1941 is not correct and the trial court's finding (R. 230-1) that prior to August, 1941 the first division had heard disputes involving yardmasters and rendered awards in such disputes does not sustain it. In the cases in which awards were rendered the jurisdictional question was not raised. In August, 1938, petitioner Order of Railroad Conductors and respondent Great Northern Railway Company joined in submitting to the fourth division a dispute involving two yardmasters. Later, however, the case was withdrawn and in October, 1938 the petitioner organization made an *ex parte* submission to the first division, where the matter is still pending (R. 158-9, 160). No award has been rendered, seven and one-half years later, because of the deadlock between the carrier and labor members of that division over the jurisdiction of disputes involving yardmasters (R. 160). Several other disputes involving yardmasters docketed in the first division are in the same situation (R. 160-1). Since the carrier members of the first division formally stated their objection to the consideration of yardmaster disputes in a letter to the employee members dated August 28, 1941 (R. 27), disputes involving yardmasters have not been considered by the first division (R. 161).

The petitioner organizations and their executive officers thereupon on January 12, 1942 began this litigation by filing in the district court their complaint in the nature of a petition for declaratory judgment (R. 2) against the members of the first division. Subsequently by amendment the members of the fourth division, respondents here, were made additional parties defendant (R. 144-6). It is by the contents of petitioners' complaint that the scope of this litigation and their own rights in it must be tested. They allege (R. 3) that they bring the action in behalf of their members and in behalf of all others similarly situated whether members or not; and later (R. 4) that in October, 1938 and March, 1941, respectively, each of them had filed an alleged dispute in behalf of a yardmaster "otherwise known as a yard service employee" with the first division which that division on account of the jurisdictional controversy aforesaid had not heard or decided. Their complaint and supporting exhibits (R. 2-88) nevertheless will be searched in vain for any showing of anything resembling the positive and direct interest in the subject-matter of this intervenor-respondent. In short, the petitioners here have neither alleged nor proved anything more than a collateral or indirect interest in the answer to the question of statutory interpretation posed by this litigation.

The fact that yardmasters supervise yard service employees (petition 4) has no bearing on the scope of the first division's jurisdiction. The yardmaster is in charge of the yard and, naturally, of *all* the employees therein. Disputes involving clerks are under the jurisdiction of the third division. Disputes involving car inspectors are under the jurisdiction of the second division. Arguments of this kind may well explain the action of the Congress in creating the fourth division.

The recital (petition 5) as to the effect of the decisions below is both incorrect and misleading. There is no basis for the statement that the district court in holding that yardmasters were not yard service employees relied "entirely" upon the oral testimony of the three railroad executives who admittedly testified to that effect, as against the one whose like testimony petitioners attempt to construe as testimony to the contrary (R. 190-221). Nothing whatever in or out of the record justifies the assertion that either court ignored the documentary evidence (by no means all of which is reproduced in the printed record), or the stipulation of facts, to say nothing of the other aids to statutory construction to which petitioners advert. The circuit court of appeals based its total conclusions specifically on a study of the record as such (R. 273), referred at length to the history of the act and its predecessor statutes and based its conclusion that the "historical alignment" of yardmasters with the train and yard service crafts in settlement of disputes is not helpful, upon the facts so discussed. It is quite needless to add that the trial court's findings were based, specifically, upon consideration of documentary as well as oral evidence (R. 229).

Insofar as the terms "yard service" and "yard service employees" are technical terms in railroad usage, introduced into the railway labor act as railroad terms having the meanings customarily assigned to them in railroad parlance (findings 7-10; R. 232) which the petitioners nowhere seriously dispute, both courts were fully justified in relying primarily upon the testimony of experienced railroad officials and representatives of railroad employees (finding of fact 13, R. 233). But the "historical" evidence, even when pieced out by the new matters which appear at pages 15-18 of petitioners' brief here, is when examined and understood, to the same effect as the oral testimony.

As to "the facts in this case which warrant the issuance of a writ of certiorari" (petition 5) the sufficient reason why they do not warrant such issuance is that they are not true.

It is not correct to assert that the first division has been "deprived" of jurisdiction of yardmaster disputes *solely* on conflicting oral testimony as to the meaning of the term "yard service employees." The first division has not been "deprived" of anything. The question is not whether before the decisions below it had something which it no longer has. The question under the statute is whether the Congress intended to confer upon it jurisdiction over disputes involving yardmasters. If the Congress did not so intend but instead conferred that jurisdiction upon the fourth division, neither division can complain.

It is not correct to say that the various public bodies listed in item 2, petition 5, have recognized the term "yard service employees" as "specifically inclusive" of yardmasters. The same bodies repeatedly have distinguished between yard service employees who in railroad parlance the country over are only those engaged actually in the switching or handling of cars; and yardmasters who supervise the work of the several classes of yard service employees. Yardmasters universally and always, have been recognized as a separate class or category of employees engaged in supervisory service.

It is not correct to say that when the 1934 amendments were enacted yardmasters had been "traditionally aligned" with the train and yard service crafts for submission of their disputes to the boards of adjustment created under prior acts. The appellate court's review of this question (R. 274-7) is enough in this connection and its correctness is not disputed.

It is not correct to say that the prior administrative construction of section 3 first (h) by the first division is held without weight in ascertaining the intent of the Congress. Neither the trial nor the reviewing court so held. Neither court, it is true, sympathized with the suggestion that "experts in railroad terminology" are to be found only among the members of the first, to the exclusion of the other three, jurisdictions of the board. But obviously, the first division's own deadlock on the question of jurisdiction—part of the very conduct of that division which according to the allegations of the original complaint, brought this litigation about—cannot now be urged as a practical construction of the act binding on the federal courts.

It is not correct to say that the decisions below "throw" the disputes of yardmasters to a board composed of water carriers and maritime units "contrary to the basic object of this section of the railway labor act." Quite aside from the question what this basic object may be, it is again to be noted that the overwhelming majority of yardmasters and of labor organizations representing yardmasters prefer the fourth division. It is only the petitioner organizations, overwhelming in number of total rail employees, but a definite minority in actual yardmaster representation, who wish the organizational and jurisdictional advantage of a tribunal dominated by themselves.

It is not correct to say that the bills designed to exclude yardmaster disputes from the jurisdiction of the first division were rejected by the congressional committees to which they were referred. Those committees simply did not report the bills back to the Senate (R. 160, 170). That is not a rejection by the committees in question, nor is it legislative action of any kind, as the circuit court of appeals very correctly pointed out (R. 278-9).

## Summary of Argument.

1. What the Congress meant by section 3 first (h) is an ordinary question of statutory interpretation. In deciding it, the first resort is to the language of the statute itself, but the Court, if need be, may also consider its legislative history, its earlier administrative interpretations and its subsequent construction by the legislature. If, however, it appears that a term used in it is one of special usage, then the question arises, what that term means in the parlance from which it came. The best guide in such case is the knowledge and experience of those who speak that parlance. The meaning of the term then becomes a question of fact to be resolved like any similar question. Once it is resolved, the only remaining question is, did the Congress, using such term in the statute, mean to use it in accordance with the usage of the trade, or in some other meaning to be gathered from some other supposed source of statutory construction? In every such case the Congress must be taken to have had the former intent, unless the contrary clearly appears. So tested, the conclusions of both trial and appellate courts as to the meaning of the term "yard service employees" were correct both under Federal Rules of Civil Procedure, Rule 52(a) and under the general principles applicable to findings of fact; and the correctness of their decisions as to the meaning of the statute follows inevitably.

2. Nothing whatever, in this record, the orders and regulations of various bodies administering various phases of the acts of Congress relating to interstate commerce, the legislative history of the act, or its subsequent legislative construction, modifies the foregoing plain conclusions.

## ARGUMENT.

### I.

**The Circuit Court of Appeals was right in deciding that the findings of fact of the District Court as to the meaning of the term "yard service employees" were fully sustained by the evidence.**

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At the outset of their argument it is obvious that petitioners are confused between the question of the proper construction of section 3 first (h) on the one hand, and the subsidiary question of the meaning of the term "yard service employees" as used therein, which must be resolved as a question of fact preliminary to such construction. Admittedly a federal court construing an act of Congress may consider primarily the language used by the Congress, and also, if necessary as aids, the legislative history of the statute; prior administrative interpretations; and subsequent legislative construction by the Congress itself. *Great Northern Railway Co.* v. *United States*, 315 U. S. 262, 277. Where a statute incorporates a term of special usage, however, and the Court must first determine the sense in which the Congress used such term, nothing in these rules of statutory construction overturns the best evidence rule. Hence the trial court was quite correct in listening to the testimony of men skilled in the parlance from which the term "yard service employees" came. It would have been correct had the question arisen, in preferring their testimony to inferences to be drawn from legislative history and administrative background, unless those inferences were so clear as to indicate that the witnesses so skilled did not in reality know what they were talking about. The appellate court, reviewing findings of fact based on a record composed in part of such testimony and in part of documents,

was right in deciding that the trial court's findings of fact were amply sustained by the record and should not be overturned, both under F. R. C. P. 52 and under general rules of trial and appellate procedure.

Petitioners, of course, are entirely inaccurate in asserting (brief 11) that either trial or appellate court ignored the documentary evidence or that the documentary evidence contradicted the oral testimony. The stipulation executed by the present petitioners as well as by the other parties as to the nature of a railroad yard, the work done by yard service employees, and the supervisory functions of yardmasters (R. 162-9) is enough to indicate that the finding that yard service employees do not include yardmasters and assistant yardmasters must be sustained, even if all oral testimony were disregarded and attention directed to the documentary proof alone. The opinion of the circuit court of appeals and especially that part of it which appears at pp. 274-7 of the present record, is enough to indicate that the petitioners' analysis of the processes by which the circuit court of appeals arrived at its decision is grossly inaccurate.

The decisions of this Court, petition, p. 7 and brief, p. 13, are not to the contrary, but sustain both district and appellate court. In *United States* v. *Cooper Corporation*, 312 U. S. 600, this Court held that, taking into consideration the text of the section construed, the use of the same term elsewhere in the same statute, the scheme and structure of the legislation itself and the use of like terms in supplemental legislation, as well as judicial decisions and legislative history, the words "any person" in section 7 of the anti-trust act do not include the United States as a party entitled to maintain an action for treble damages. The instant case likewise resembles *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107-11, in which this Court

held (reversing the circuit court of appeals and affirming the district court) that the term "sub-contractor" in section 2(a) of the Miller act does not include a materialman who merely sells materials to contractors. In so holding, this Court said that the policy of the act, to protect those whose labor and materials go into public projects, does not warrant disregard of the plain words of the act itself: "Specific terms prevail over the general term in the same or another statute which otherwise might be controlling" (*Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208); and that the practical considerations underlying the act, as well as the clear distinction between sub-contractors and materialmen to be gathered from the reports of hearings before congressional committees, precluded any other construction. As to divergent decisions of state and lower federal courts, this Court in footnote 6, 322 U. S. 108, said "Any loose, interchangeable use of 'sub-contractor' and 'materialman' in any prior decision of ours is without significance." This observation applies as well to the references in paragraphs 1-7, pp. 15-18 of petitioners' brief,—even if those references, most of which postdate the enactment of section 3 first (h), can be a guide to the Congressional understanding of the term "yard service employees" at the time of enactment.

In summary, petitioners suggest, and the entire record, with other matters within the scope of judicial notice in fact disclose, no reason why rule 52(a) does not apply to the trial court's finding as to the meaning of the term "yard service employees," especially insofar as the record presents any conflict. Again the cases at p. 7 of the petition and p. 13 of the brief are not to the contrary. *District of Columbia* v. *Pace*, 320 U. S. 698, for example, holds simply that rule 52 did not supersede the special provisions for review contained in the act creating the board of tax appeals for the District of Columbia. Such holding

obviously has no application to the findings here, as to the meaning in railroad parlance of the term "yard service employees," and as to the exclusion of yardmasters and assistant yardmasters from that meaning.

## II.

**Nothing in the extraneous matters relied upon by petitioners created any reviewable question of error in the findings of the District Court or the decision of the Circuit Court of Appeals.**

It remains only to inquire whether there is anything in the excerpts from administrative reports (brief 15-18), the alleged alignment of yardmasters with train and yard service crafts for submission of disputes (brief 18), or the first division's own interpretation of section 3 first (h) (brief 19-20), which calls for review of the decision of the circuit court of appeals that findings 7-13 of the district court are not to be disturbed (R. 272-274).

1. If there were nothing else on the subject, in or out of the record, the agency report citations (brief 15-18) would be totally insufficient to establish any such "uniformity of terminology" (brief 15) as petitioners claim. The report of the 1943 emergency board was not directed to and can have no possible bearing upon, the question with which the district court and the circuit court of appeals were dealing in this case. Yardmasters were mentioned in that report because, and only because, these very petitioners brought their yardmaster members into the proceeding with them (R. 162; ante p. 3). Needless to say, the handling of yardmaster disputes by the National Railroad Adjustment Board was not even mentioned in the report.

As to the first three reports of the National Mediation Board (brief 16) beginning with the fourth annual report

for the fiscal year ended June 30, 1938 the heading relied upon by petitioners as some sort of evidence of Congressional intent was discontinued; and the fourth to eleventh annual reports, inclusive, treat yardmasters and yard service employees in separate categories as far as their controversies before the Adjustment Board are concerned.

Naturally the Brotherhood of Railroad Trainmen, petitioner here, included in the information furnished by it to the Railroad Retirement Board (brief 16) for its operating manual for field officers the words "yardmasters and assistant yardmasters." Again see R. 162; ante p. 3.

Decision No. 2948 as appears from the context, brief 17, involved a dispute which under the 1934 act would properly be triable to the first division. It was not a dispute "involving yardmasters" at all. On the contrary, it involved the question of the right of the employees therein mentioned to exercise seniority *as yardmen* in which respect they are protected and governed by the agreement *covering yardmen.*

Foot-board yardmasters (brief 17) are not yardmasters at all. They are yard foremen or conductors who are paid compensation (usually 5¢ an hour) above the regular foreman's or conductor's rate, for supervising their own crews. Since at least as early as the operations of the United States Railroad Labor Board they have uniformly been treated as belonging to a different class or craft, coming under and being governed by the same agreements as yard foremen, yard conductors and yard brakemen.[5]

We do not believe the method used by the National Railroad Adjustment Board in indexing the awards of the first

[5] Rules for Reporting Information on Railroad Employees, together with a Classification and Index of Steam Railroad Occupations, Railway Labor Board, Chicago, Illinois, May, 1921, pp. 249, 255-7, 320.

division (brief 17) is any indication of the Congressional intent.

Finally it must be noted again, as to nearly all of the references so relied upon by the petitioners, that they are of dates subsequent to the 1934 amendments to the Railway Labor Act and therefore can hardly elucidate the Congressional intent at and before the enactment of the statute.

As opposed to these isolated and misinterpreted instances there are clear rulings of the same agencies, of much earlier dates, in support of the decisions below. Granting that extended quotation and analysis is inappropriate at this point, the District Court and the Circuit Court of Appeals had before them, in the record or by citation, such examples as the following:

Interstate Commerce Commission, Ex parte 72, Order of February, 1924 (intervenor's exhibits 2-5, in the record, though not printed in the Circuit Court of Appeals).

United States Railroad Administration, General Order No. 27.

United States Railroad Labor Board decisions, Nos. 2, 147, 1266.

Interstate Commerce Commission Regulations Governing making and offering of nominations to United States Railroad Labor Board, April 16, 1921.

Interstate Commerce Commission, Ex parte Order No. 106 (6-hour day investigation, dated December 6, 1932).

Interstate Commerce Commission Rules of Classification adopted July 17, 1940, intervenor's exhibit 6 (also in the record but not printed in the Circuit Court of Appeals).

2. The argument as to the "historical alignment" of yardmasters with train and yard service crafts in the set-

tlement of disputes under prior acts is effectively disposed of by the opinion of the Circuit Court of Appeals, R. 274-7. The first division's having taken jurisdiction of disputes "involving yardmasters" in cases in which no jurisdictional question was raised, and its deadlock on the jurisdictional question when raised—the very genesis of the dispute which caused the complaint for declaratory judgment to be filed—is hardly a contemporaneous interpretation which can aid, much less bind, the federal courts in deciding what section 3 first (h) means. It may be noted in passing that the words "involving yardmasters" first came into this litigation *via* the complaint. Nowhere in the record, in the briefs below, or here, do petitioners say what they think it means. The conclusion, in the opinion of the Circuit Court of Appeals, that it means in effect cases in which the subject matter of dispute or controversy is some right or claim of a yardmaster or assistant yardmaster in his capacity as such (R. 277) seems inherently sound and the petition and brief suggest no cogent reason why that is not what the Congress had in mind in parceling out disputes to the respective four divisions of the board.

3. The argument under subdivision IV, page 21 of the brief, is another complete *non sequitur*. There is no presumption that the latter part of section 3 first (h) is meaningless. Its language with respect to the fourth division is plain and unambiguous. It is that the fourth division shall "have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second and third divisions." The statute does not state "all other employees *of such* carriers" or "all other employees of carriers *engaged in the transportation* of passengers or property by water" but *all other* employees "*of carriers over which jurisdiction is not given to the first,*

*second and third divisions.*" The use of a comma after the word "water" is also significant and indicates that a different group of employees was contemplated by the last clause. Otherwise there would be no necessity for the clause and it would have been omitted, since the first part of the sentence includes disputes involving all employees of carriers engaged in transportation by water.

4. As heretofore pointed out, the senate committee on interstate commerce did not "reject" the proposed amendments (brief 22). What it did was not to report them out. The opinion below (R. 278-9) completely disposed of this argument.

## Conclusion.

The petition and brief ignore the fundamental question whether the decisions of the District Court and the Circuit Court of Appeals were basically sound and just. They point out no probable cause to believe that either court committed any error in either form or substance. Both decisions clearly were correct unless there is to be gathered from section 3 first (h) of the Railway Labor Act a Congressional intention that the class or craft of supervisory employees known as yardmasters should and must be compelled to try their controversies with carriers before a tribunal whose employee members are selected by the very classes or crafts which in the course of their duties they must supervise. Unless made clear either by the clear language of the act, or by some implication which in view of its history and purpose is inescapable, no such Congressional intention should be presumed.

In holding that the Congress intended otherwise, both the District Court and the Circuit Court of Appeals were so clearly right as to leave no question for this court's review. Their decisions involve no error of law. They decided no

federal question, substantial or otherwise, in a way probably in conflict with applicable decisions of this Court. They did not in deciding any such question depart from the accepted and usual course of judicial procedure. There is in this record no question of construction of a federal statute, or other question of federal law, which has not been fully settled heretofore by repeated decisions of this Court. There is thus no question justifying issuance of the writ of certiorari under section 5(b) of rule 38 or any of the other rules laid down to govern the granting of such writs. The petitions should be denied.

Respectfully submitted,

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